

Senate Study Bill 1133 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON SEGEBART)

A BILL FOR

1 An Act authorizing mental health professionals to perform
2 certain functions relating to persons with substance-related
3 disorders and persons with mental illness.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 125.2, Code 2017, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 10A. "*Mental health professional*" means the
4 same as defined in section 228.1.

5 Sec. 2. Section 125.12, subsection 3, Code 2017, is amended
6 to read as follows:

7 3. The director shall provide for adequate and appropriate
8 treatment for persons with substance-related disorders and
9 concerned family members admitted under [sections 125.33](#) and
10 [125.34](#), or under [section 125.75](#), [125.81](#), or [125.91](#). Treatment
11 shall not be provided at a correctional institution except
12 for inmates. A mental health professional, ~~as defined in~~
13 ~~[section 228.1](#)~~, who is employed by a treatment provider under
14 the program may provide treatment to a person with co-occurring
15 substance-related and mental health disorders. Such treatment
16 may also be provided by a person employed by such a treatment
17 provider who is receiving the supervision required to meet the
18 definition of mental health professional but has not completed
19 the supervision component.

20 Sec. 3. Section 125.33, subsections 1 and 3, Code 2017, are
21 amended to read as follows:

22 1. A person with a substance-related disorder may apply for
23 voluntary treatment or rehabilitation services directly to a
24 facility or to a licensed physician and surgeon or osteopathic
25 physician and surgeon or to a mental health professional. If
26 the proposed patient is a minor or an incompetent person, a
27 parent, a legal guardian or other legal representative may
28 make the application. The licensed physician and surgeon or
29 osteopathic physician and surgeon, mental health professional,
30 or any employee or person acting under the direction or
31 supervision of the physician and surgeon or osteopathic
32 physician and surgeon, mental health professional, or the
33 facility shall not report or disclose the name of the person or
34 the fact that treatment was requested or has been undertaken
35 to any law enforcement officer or law enforcement agency; nor

1 shall such information be admissible as evidence in any court,
2 grand jury, or administrative proceeding unless authorized
3 by the person seeking treatment. If the person seeking such
4 treatment or rehabilitation is a minor who has personally made
5 application for treatment, the fact that the minor sought
6 treatment or rehabilitation or is receiving treatment or
7 rehabilitation services shall not be reported or disclosed to
8 the parents or legal guardian of such minor without the minor's
9 consent, and the minor may give legal consent to receive such
10 treatment and rehabilitation.

11 3. A person with a substance-related disorder seeking
12 treatment or rehabilitation and who is either addicted or
13 dependent on a chemical substance may first be examined and
14 evaluated by a licensed physician and surgeon or osteopathic
15 physician and surgeon or a mental health professional who may
16 prescribe, if authorized or licensed to do so, a proper course
17 of treatment and medication, if needed. The licensed physician
18 and surgeon or osteopathic physician and surgeon or mental
19 health professional may further prescribe a course of treatment
20 or rehabilitation and authorize another licensed physician and
21 surgeon or osteopathic physician and surgeon, mental health
22 professional, or facility to provide the prescribed treatment
23 or rehabilitation services. Treatment or rehabilitation
24 services may be provided to a person individually or in
25 a group. A facility providing or engaging in treatment
26 or rehabilitation shall not report or disclose to a law
27 enforcement officer or law enforcement agency the name of any
28 person receiving or engaged in the treatment or rehabilitation;
29 nor shall a person receiving or participating in treatment or
30 rehabilitation report or disclose the name of any other person
31 engaged in or receiving treatment or rehabilitation or that the
32 program is in existence, to a law enforcement officer or law
33 enforcement agency. Such information shall not be admitted
34 in evidence in any court, grand jury, or administrative
35 proceeding. However, a person engaged in or receiving

1 treatment or rehabilitation may authorize the disclosure of the
2 person's name and individual participation.

3 Sec. 4. Section 125.34, subsections 3 and 7, Code 2017, are
4 amended to read as follows:

5 3. A person who arrives at a facility and voluntarily
6 submits to examination shall be examined by a licensed
7 physician or mental health professional as soon as possible
8 after the person arrives at the facility. The person
9 may then be admitted as a patient or referred to another
10 health facility. The referring facility shall arrange for
11 transportation.

12 7. A licensed physician and surgeon or osteopathic
13 physician and surgeon, mental health professional, facility
14 administrator, or an employee or a person acting as or on
15 behalf of the facility administrator, is not criminally or
16 civilly liable for acts in conformity with [this chapter](#), unless
17 the acts constitute willful malice or abuse.

18 Sec. 5. Section 125.75, subsection 2, paragraph c,
19 subparagraph (1), Code 2017, is amended to read as follows:

20 (1) A written statement of a licensed physician or mental
21 health professional in support of the application.

22 Sec. 6. Section 125.78, subsection 3, paragraph b, Code
23 2017, is amended to read as follows:

24 b. Requiring an examination of the respondent, prior to
25 the hearing, by one or more licensed physicians or mental
26 health professionals who shall submit a written report of the
27 examination to the court as required by [section 125.80](#).

28 Sec. 7. Section 125.80, Code 2017, is amended to read as
29 follows:

30 **125.80 Physician's or mental health professional's**
31 **examination — report — scheduling of hearing.**

32 1. a. An examination of the respondent shall be conducted
33 within a reasonable time and prior to the commitment hearing by
34 one or more licensed physicians or mental health professionals
35 as required by the court's order. If the respondent is taken

1 into custody under [section 125.81](#), the examination shall be
2 conducted within twenty-four hours after the respondent is
3 taken into custody. If the respondent desires, the respondent
4 may have a separate examination by a licensed physician or
5 mental health professional of the respondent's own choice.
6 The court shall notify the respondent of the right to choose
7 a licensed physician or mental health professional for a
8 separate examination. The reasonable cost of the examinations
9 shall be paid from county funds upon order of the court if the
10 respondent lacks sufficient funds to pay the cost.

11 *b.* A licensed physician or mental health professional
12 conducting an examination pursuant to [this section](#) may consult
13 with or request the participation in the examination of
14 facility personnel, and may include with or attach to the
15 written report of the examination any findings or observations
16 by facility personnel who have been consulted or have
17 participated in the examination.

18 *c.* If the respondent is not taken into custody under
19 [section 125.81](#), but the court is subsequently informed that the
20 respondent has declined to be examined by a licensed physician
21 or mental health professional pursuant to the court order,
22 the court may order limited detention of the respondent as
23 necessary to facilitate the examination of the respondent by
24 the licensed physician or mental health professional.

25 2. A written report of the examination by a court-designated
26 licensed physician or mental health professional shall be filed
27 with the clerk prior to the hearing date. A written report
28 of an examination by a licensed physician or mental health
29 professional chosen by the respondent may be similarly filed.
30 The clerk shall immediately:

31 *a.* Cause a report to be shown to the judge who issued the
32 order.

33 *b.* Cause the respondent's attorney to receive a copy of
34 the report of a court-designated licensed physician or mental
35 health professional.

1 3. If the report of a court-designated licensed physician or
2 mental health professional is to the effect that the respondent
3 is not a person with a substance-related disorder, the court,
4 without taking further action, may terminate the proceeding and
5 dismiss the application on its own motion and without notice.

6 4. If the report of a court-designated licensed physician or
7 mental health professional is to the effect that the respondent
8 is a person with a substance-related disorder, the court shall
9 schedule a commitment hearing as soon as possible. The hearing
10 shall be held not more than forty-eight hours after the report
11 is filed, excluding Saturdays, Sundays, and holidays, unless
12 an extension for good cause is requested by the respondent,
13 or as soon thereafter as possible if the court considers that
14 sufficient grounds exist for delaying the hearing.

15 Sec. 8. Section 125.82, subsection 3, Code 2017, is amended
16 to read as follows:

17 3. The person who filed the application and a licensed
18 physician, mental health professional ~~as defined in section~~
19 ~~228.1~~, or certified alcohol and drug counselor certified by the
20 nongovernmental Iowa board of substance abuse certification who
21 has examined the respondent in connection with the commitment
22 hearing shall be present at the hearing, unless the court
23 for good cause finds that their presence or testimony is not
24 necessary. The applicant, respondent, and the respondent's
25 attorney may waive the presence or telephonic appearance of the
26 licensed physician, mental health professional, or certified
27 alcohol and drug counselor who examined the respondent and
28 agree to submit as evidence the written report of the licensed
29 physician, mental health professional, or certified alcohol
30 and drug counselor. The respondent's attorney shall inform
31 the court if the respondent's attorney reasonably believes
32 that the respondent, due to diminished capacity, cannot make
33 an adequately considered waiver decision. "*Good cause*" for
34 finding that the testimony of the licensed physician, mental
35 health professional, or certified alcohol and drug counselor

1 who examined the respondent is not necessary may include, but
2 is not limited to, such a waiver. If the court determines
3 that the testimony of the licensed physician, mental health
4 professional, or certified alcohol and drug counselor is
5 necessary, the court may allow the licensed physician, mental
6 health professional, or certified alcohol and drug counselor to
7 testify by telephone. The respondent shall be present at the
8 hearing unless prior to the hearing the respondent's attorney
9 stipulates in writing that the attorney has conversed with the
10 respondent, and that in the attorney's judgment the respondent
11 cannot make a meaningful contribution to the hearing, or that
12 the respondent has waived the right to be present, and the
13 basis for the attorney's conclusions. A stipulation to the
14 respondent's absence shall be reviewed by the court before the
15 hearing, and may be rejected if it appears that insufficient
16 grounds are stated or that the respondent's interests would not
17 be served by the respondent's absence.

18 Sec. 9. Section 125.86, subsection 3, paragraph b, Code
19 2017, is amended to read as follows:

20 b. An advanced registered nurse practitioner who is
21 not certified as a psychiatric advanced registered nurse
22 practitioner but who meets the qualifications ~~set forth in the~~
23 ~~definition of a mental health professional in~~ section 228.1,
24 may complete periodic reports pursuant to paragraph "a".

25 Sec. 10. Section 125.91, subsection 3, Code 2017, is amended
26 to read as follows:

27 3. The attending physician shall examine and may detain
28 the person pursuant to the magistrate's order for a period not
29 to exceed forty-eight hours from the time the order is dated,
30 excluding Saturdays, Sundays, and holidays, unless the order is
31 dismissed by a magistrate. The facility may provide treatment
32 which is necessary to preserve the person's life or to
33 appropriately control the person's behavior if the behavior is
34 likely to result in physical injury to the person or others if
35 allowed to continue or is otherwise deemed medically necessary

1 by the attending physician or mental health professional,
2 but shall not otherwise provide treatment to the person
3 without the person's consent. The person shall be discharged
4 from the facility and released from detention no later than
5 the expiration of the forty-eight-hour period, unless an
6 application for involuntary commitment is filed with the clerk
7 pursuant to [section 125.75](#). The detention of a person by the
8 procedure in [this section](#), and not in excess of the period of
9 time prescribed by [this section](#), shall not render the peace
10 officer, attending physician, or facility detaining the person
11 liable in a criminal or civil action for false arrest or false
12 imprisonment if the peace officer, attending physician, mental
13 health professional, or facility had reasonable grounds to
14 believe that the circumstances described in [subsection 1](#) were
15 applicable.

16 Sec. 11. Section 125.92, subsection 4, Code 2017, is amended
17 to read as follows:

18 4. Enjoy all legal, medical, religious, social, political,
19 personal, and working rights and privileges, which the person
20 would enjoy if not detained, taken into immediate custody,
21 or committed, consistent with the effective treatment of the
22 person and of the other persons in the facility. If the
23 person's rights are restricted, the physician's or mental
24 health professional's direction to that effect shall be noted
25 in the person's record. The person or the person's next of
26 kin or guardian shall be advised of the person's rights and
27 be provided a written copy upon the person's admission to or
28 arrival at the facility.

29 Sec. 12. Section 229.6, subsection 2, paragraph c,
30 subparagraph (1), Code 2017, is amended to read as follows:

31 (1) A written statement of a licensed physician or mental
32 health professional in support of the application.

33 Sec. 13. Section 229.8, subsection 3, paragraph b, Code
34 2017, is amended to read as follows:

35 b. Order an examination of the respondent, prior to

1 the hearing, by one or more licensed physicians or mental
2 health professionals who shall submit a written report on the
3 examination to the court as required by [section 229.10](#).

4 Sec. 14. Section 229.10, Code 2017, is amended to read as
5 follows:

6 **229.10 Physicians' or mental health professionals'**
7 **examination — report.**

8 1. *a.* An examination of the respondent shall be
9 conducted by one or more licensed physicians or mental health
10 professionals, as required by the court's order, within a
11 reasonable time. If the respondent is detained pursuant to
12 section 229.11, subsection 1, paragraph "b", the examination
13 shall be conducted within twenty-four hours. If the respondent
14 is detained pursuant to [section 229.11, subsection 1](#),
15 paragraph "a" or "c", the examination shall be conducted
16 within forty-eight hours. If the respondent so desires,
17 the respondent shall be entitled to a separate examination
18 by a licensed physician or mental health professional of
19 the respondent's own choice. The reasonable cost of the
20 examinations shall, if the respondent lacks sufficient funds to
21 pay the cost, be paid by the regional administrator from mental
22 health and disability services region funds upon order of the
23 court.

24 *b.* Any licensed physician or mental health professional
25 conducting an examination pursuant to [this section](#) may consult
26 with or request the participation in the examination of any
27 consulting mental health professional, and may include with or
28 attach to the written report of the examination any findings
29 or observations by any consulting mental health professional
30 who has ~~been so consulted or has so~~ participated in the
31 examination.

32 *c.* If the respondent is not taken into custody under
33 section 229.11, but the court is subsequently informed that
34 the respondent has declined to be examined by ~~the~~ one or more
35 licensed ~~physician or~~ physicians or mental health professionals

1 pursuant to the court order, the court may order such limited
2 detention of the respondent as is necessary to facilitate the
3 examination of the respondent by the one or more licensed
4 ~~physician or~~ physicians or mental health professionals.

5 2. A written report of the examination by the one or more
6 court-designated ~~physician or~~ physicians or mental health
7 professionals shall be filed with the clerk prior to the time
8 set for hearing. A written report of any examination by a
9 physician chosen by the respondent may be similarly filed. The
10 clerk shall immediately do all of the following:

11 a. Cause the report or reports to be shown to the judge who
12 issued the order; ~~and~~.

13 b. Cause the respondent's attorney to receive a copy of
14 the report ~~of the court-designated physician or physicians or~~
15 reports.

16 3. If the report of one or more of the court-designated
17 ~~physician or~~ physicians or mental health professionals is
18 to the effect that the individual is not seriously mentally
19 impaired, the court may without taking further action terminate
20 the proceeding and dismiss the application on its own motion
21 and without notice.

22 4. If the report of one or more of the court-designated
23 ~~physician or~~ physicians or mental health professionals is
24 to the effect that the respondent is seriously mentally
25 impaired, the court shall schedule a hearing on the application
26 as soon as possible. The hearing shall be held not more
27 than forty-eight hours after the report is filed, excluding
28 Saturdays, Sundays and holidays, unless an extension for good
29 cause is requested by the respondent, or as soon thereafter as
30 possible if the court considers that sufficient grounds exist
31 for delaying the hearing.

32 Sec. 15. Section 229.22, subsection 2, paragraph a,
33 subparagraphs (2), (3), (4), and (5), Code 2017, are amended
34 to read as follows:

35 (2) Upon delivery of the person believed mentally ill to

1 the facility or hospital, the examining physician, examining
2 physician assistant, examining mental health professional, or
3 examining psychiatric advanced registered nurse practitioner
4 may order treatment of that person, including chemotherapy,
5 but only to the extent necessary to preserve the person's life
6 or to appropriately control behavior by the person which is
7 likely to result in physical injury to that person or others
8 if allowed to continue.

9 (3) The peace officer who took the person into custody,
10 or other party who brought the person to the facility or
11 hospital, shall describe the circumstances of the matter to the
12 examining physician, examining physician assistant, examining
13 mental health professional, or examining psychiatric advanced
14 registered nurse practitioner. If the person is a peace
15 officer, the peace officer may do so either in person or by
16 written report.

17 (4) If the examining physician, examining physician
18 assistant, examining mental health professional, or examining
19 psychiatric advanced registered nurse practitioner finds
20 that there is reason to believe that the person is seriously
21 mentally impaired, and because of that impairment is likely
22 to physically injure the person's self or others if not
23 immediately detained, the examining physician, examining
24 physician assistant, examining mental health professional, or
25 examining psychiatric advanced registered nurse practitioner
26 shall at once communicate with the nearest available magistrate
27 as defined in [section 801.4, subsection 10](#).

28 (5) The magistrate shall, based upon the circumstances
29 described by the examining physician, examining physician
30 assistant, examining mental health professional, or examining
31 psychiatric advanced registered nurse practitioner, give the
32 examining physician, examining physician assistant, examining
33 mental health professional, or examining psychiatric advanced
34 registered nurse practitioner oral instructions either
35 directing that the person be released forthwith or authorizing

1 the person's detention in an appropriate facility. A peace
2 officer from the law enforcement agency that took the person
3 into custody, if available, during the communication with the
4 magistrate, may inform the magistrate that an arrest warrant
5 has been issued for or charges are pending against the person
6 and request that any oral or written order issued under this
7 subsection require the facility or hospital to notify the law
8 enforcement agency about the discharge of the person prior to
9 discharge. The magistrate may also give oral instructions and
10 order that the detained person be transported to an appropriate
11 facility.

12 Sec. 16. Section 229.22, subsection 3, Code 2017, is amended
13 to read as follows:

14 3. The chief medical officer of the facility or hospital
15 shall examine and may detain and care for the person taken
16 into custody under the magistrate's order for a period not to
17 exceed forty-eight hours from the time such order is dated,
18 excluding Saturdays, Sundays and holidays, unless the order is
19 sooner dismissed by a magistrate. The facility or hospital may
20 provide treatment which is necessary to preserve the person's
21 life, or to appropriately control behavior by the person
22 which is likely to result in physical injury to the person's
23 self or others if allowed to continue, but may not otherwise
24 provide treatment to the person without the person's consent.
25 The person shall be discharged from the facility or hospital
26 and released from custody not later than the expiration of
27 that period, unless an application is sooner filed with the
28 clerk pursuant to [section 229.6](#). Prior to such discharge the
29 facility or hospital shall, if required by [this section](#), notify
30 the law enforcement agency requesting such notification about
31 the discharge of the person. The law enforcement agency shall
32 retrieve the person no later than six hours after notification
33 from the facility or hospital but in no circumstances shall the
34 detention of the person exceed the period of time prescribed
35 for detention by [this subsection](#). The detention of any person

1 by the procedure and not in excess of the period of time
2 prescribed by [this section](#) shall not render the peace officer,
3 physician, mental health professional, facility, or hospital
4 so detaining that person liable in a criminal or civil action
5 for false arrest or false imprisonment if the peace officer,
6 physician, mental health professional, facility, or hospital
7 had reasonable grounds to believe the person so detained was
8 mentally ill and likely to physically injure the person's self
9 or others if not immediately detained, or if the facility
10 or hospital was required to notify a law enforcement agency
11 by [this section](#), and the law enforcement agency requesting
12 notification prior to discharge retrieved the person no later
13 than six hours after the notification, and the detention prior
14 to the retrieval of the person did not exceed the period of
15 time prescribed for detention by [this subsection](#).

16 Sec. 17. Section 229.23, subsection 3, Code 2017, is amended
17 to read as follows:

18 3. In addition to protection of the person's constitutional
19 rights, enjoyment of other legal, medical, religious, social,
20 political, personal and working rights and privileges which
21 the person would enjoy if the person were not so hospitalized
22 or detained, so far as is possible consistent with effective
23 treatment of that person and of the other patients of the
24 hospital. If the patient's rights are restricted, the
25 physician's or mental health professional's direction to
26 that effect shall be noted on the patient's record. The
27 department of human services shall, in accordance with chapter
28 17A establish rules setting forth the specific rights and
29 privileges to which persons so hospitalized or detained are
30 entitled under [this section](#), and the exceptions provided by
31 section 17A.2, subsection 11, paragraphs "a" and "k", shall not
32 be applicable to the rules so established. The patient or the
33 patient's next of kin or friend shall be advised of these rules
34 and be provided a written copy upon the patient's admission to
35 or arrival at the hospital.

1 Sec. 18. Section 229.25, subsection 1, paragraph a,
2 subparagraph (1), Code 2017, is amended to read as follows:

3 (1) The information is requested by a licensed physician or
4 mental health professional, attorney, or advocate who provides
5 the chief medical officer with a written waiver signed by the
6 person about whom the information is sought.

7 EXPLANATION

8 The inclusion of this explanation does not constitute agreement with
9 the explanation's substance by the members of the general assembly.

10 This bill allows mental health professionals to perform
11 examinations, treat and prescribe treatment or medication, if
12 authorized to do so, and submit written statements and reports
13 as required or ordered by a court in accordance with certain
14 voluntary and involuntary hospitalization and commitment
15 proceedings for persons with a substance-related disorder or
16 serious mental illness.

17 A mental health professional is defined in Code section
18 228.1 as an individual who either holds at least a master's
19 degree in a mental health field, a current license in this
20 state if practicing a licensed profession, and has at least two
21 years of post-degree clinical experience under the supervision
22 of another mental health professional assessing mental health
23 needs and providing appropriate mental health services; or the
24 individual holds a current license in this state if practicing
25 a licensed profession and is a psychiatrist, a licensed
26 advanced registered nurse practitioner who holds a national
27 certification in psychiatric mental health care, a physician
28 assistant practicing under the supervision of a psychiatrist,
29 or is licensed by the board of psychology and holds a doctorate
30 degree in psychology.

31 The bill allows a mental health professional to examine a
32 person when it appears that the person should be immediately
33 detained due to a serious mental impairment but an application
34 has not been filed naming the person as the respondent and the
35 person cannot be ordered into immediate custody and detained or

1 when necessary to preserve the person's life or appropriately
2 control the person's behavior if physical injury to the
3 person or others is likely. The bill excludes mental health
4 professionals from liability for detaining a person in this
5 situation.

6 The bill excludes mental health professionals from civil or
7 criminal liability for the professional's role in admitting a
8 person to a facility or hospital or providing treatment to a
9 person.